

The applicant maintains that privately-owned hospitals must generally finance themselves from sums paid under health-care arrangements entered into with the appropriate health-insurance schemes and their central associations and, where applicable, from direct contributions for hospital construction under funding arrangements in place in the relevant Land. By contrast, publicly-owned hospitals also benefit from the fact that their regular operating losses are consistently covered by the relevant public authorities. In the applicant's opinion, those payments constitute aid within the meaning of Article 87(1) EC which not only is subject to a notification requirement under Article 88(3) EC but is also incompatible with the common market.

The applicant also maintains that the complaint is well founded as the Commission has failed to act notwithstanding a duty to act upon receipt of the complaint.

Action brought on 14 May 2004 by easyJet Airline Company Limited against the Commission of the European Communities

(Case T-177/04)

(2004/C 201/37)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 May 2004 by easyJet Airline Company Limited, Luton, United Kingdom, represented by Mr J. Cook, Mr S. Dolan and Mr J. Parker Solicitors.

The applicant claims that the Court should:

- Annul the Commission's Decision of 11 February 2004 in Case No. COMP/M.3280 (Air France/KLM) declaring a concentration to be compatible with the common market, subject to conditions, in accordance with Article 6 (1) (b) and Article 6 (2) of Council Regulation (EEC) No. 4064/89 ⁽¹⁾
- order the Commission to pay the costs

Pleas in law and main arguments:

In the contested decision the Commission concluded that the merger between the airlines 'Air France' and 'KLM' would result in the creation or strengthening of a dominant position on a total of fourteen city-to-city air routes. However, the Commission declared the concentration compatible with the common market, subject to compliance with the undertakings submitted by the parties to the merger.

The applicant, which is itself an airline company, seeks the annulment of that decision invoking a number of manifest

errors of assessment by the Commission. More particularly, it claims that the Commission failed to consider properly the following matters:

- the enhancement of the merged entity's dominance on routes where there was no existing overlap between Air France and KLM;
- whether the merger created or strengthened a dominant position in markets for the purchase of airport services;
- the effects of the merger on potential competition.

It further claims that the Commission failed to provide adequate reasons to support its conclusion that the airports 'Charles de Gaulle' and 'Orly' in Paris were substitutable. Finally, it considers that the undertakings of the parties were manifestly inadequate to restore a structure of effective competition on markets where dominance concerns arose and that the Commission committed an error of assessment in accepting them.

⁽¹⁾ OJ L 257/90, p. 13

Action brought on 17 May 2004 by MPS Group Inc., against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-178/04)

(2004/C 201/38)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 17 May 2004 by MPS Group Inc., Jacksonville, Florida, USA represented by Ms K. O'Rourke and Mr P. Kavanagh Solicitors.

Modis-Distribuição Centralizada SA was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- Annul the Decision of the Fourth Board of Appeal of 4 February 2004 insofar as it upheld Opposition number B000170599 with respect to the following services in class 35: 'Employment agency services, recruitment consultancy services; payroll preparation services; time recording services; provision of temporary and permanent staff';
- in the alternative, annul the decision insofar as it covers the following services in class 35: 'Employment agency services, recruitment consultancy services, provision of temporary and permanent staff'.